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**Seruntun Maju Sdn Bhd v Pengarah Kastam Negeri Perak
Jabatan Kastam Diraja Malaysia & Anor**

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NO A-01(A)-429-07 OF 2018
HAMID SULTAN, HANIPAH FARIKULLAH AND KAMALUDIN MD
SAID JJCA

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18 JUNE 2020

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Administrative Law — Judicial review — Application for — Certiorari to quash bills of demand — Trial judge dismissed application — Appeal against decision — Whether conditions must be set out together with licence — Whether conditions specified were ultra vires — Whether bills of demand ought to be quashed — Customs Act 1967 s 65D

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This was an appeal by the appellant against the decision of the learned High Court judge in dismissing the appellant's judicial review application for, among others, an order of certiorari to quash the bills of demand issued by the respondents. The appellant's principal activity was operating off a duty-free shop in the border town of Pengkalan Hulu, Perak. The said duty-free shop operated was situated between the Malaysian and Thai immigration checkpoints. Since the appellant commenced its business operation in the year

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1991, the second respondent had consistently granted duty-free shop licences to the appellant pursuant to s 65D of the Customs Act 1967 ('the Act'). The appellant wrote to the Royal Malaysian Customs Department ('the Customs Department') and requested for the duty-free shop to be allowed to operate from 9am to 10pm. Prior to this request, the appellant had operated from 9am to 7pm. The Customs Department partially allowed the appellant's request and stated that the appellant's duty-free shop could operate from 9am to 9pm. The Customs Department also stated that a new set of conditions ie Perintah Tetap Kastam Bil 55 ('Appendix D') would be given. Among others, the said conditions stated that the licensee shall prepare records of full names; the

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number of travel documents; and vehicle number. The appellant stated that they could not possibly state the name of customers and passport numbers in the cash sale receipts. The Customs Department issued a renewed licence which was effective from 1 June 2016 to 31 May 2018 ('the 2016 licence'). In the 2016 licence, Appendix D was not attached to the same. Later, the Customs Department sent Appendix D to the appellant. No reasons were provided by the Customs Department on why the said attachment was not provided together with the 2016 licence. The Customs Department, writing on behalf of the first respondent, issued its findings in its audit for the period between October 2013 and November 2016 and stated that the appellant did not keep

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the records of purchasers pursuant to Appendix D; and the appellant did not state the documents on the names, journey and number of its customers. The first respondent proceeded to raise bills of demand relating to import duties, excise duties, sales tax and GST against the appellant. The present appeal related to the bills of demand for import duties and excise duties.

Held, allowing the appeal with costs of RM10,000 and setting aside the decision of the High Court:

- (1) The disputes to the whole matter depend on the word 'specify' in s 65D(2) of the Act. By reading 'specify in the licence' based on its natural meaning, it would naturally meant 'to mention explicitly, definitely and certainly in the licence.' In other words, no conditions could be imposed after the licence had been issued as this went against the principle of stating it explicitly, definitely and certainly. Based on a reading of the plain meaning of the word 'specify' and applying it to s 65D(3) of the Act, it was clear that the conditions must be unambiguously particularised and identified in the duty-free shop licence. Further, s 65D(3) of the Act only allowed the respondents to specify the conditions in the licence. There were no provisions that allowed the respondents to modify and vary the licence or add further conditions. The first respondent's act of adding new conditions subsequent to the issuance of duty-free shop licenses was ultra vires of s 65D of the Act and those conditions stand to be quashed (see paras 26–27, 39–40 & 42).

[Bahasa Malaysia summary]

Ini adalah rayuan oleh perayu terhadap keputusan hakim Mahkamah Tinggi yang bijaksana dalam menolak permohonan semakan kehakiman perayu, antara lain, perintah certiorari untuk membatalkan bil tuntutan yang dikeluarkan oleh responden. Kegiatan utama perayu adalah mengoperasikan sebuah kedai bebas cukai di bandar sempadan Pengkalan Hulu, Perak. Kedai bebas cukai tersebut yang dikendalikan terletak di antara pusat pemeriksaan imigresen Malaysia dan Thailand. Sejak perayu memulakan operasi perniagaannya pada tahun 1991, responden kedua secara konsisten memberikan lesen kedai bebas cukai kepada perayu menurut s 65D Akta Kastam 1967 ('Akta'). Perayu menulis surat kepada Jabatan Kastam Diraja Malaysia ('Jabatan Kastam') dan meminta agar kedai bebas cukai itu dibenarkan beroperasi dari jam 9 pagi hingga 10 malam. Sebelum permintaan ini, perayu telah beroperasi dari jam 9 pagi hingga 7 malam. Jabatan Kastam membenarkan sebahagian permintaan perayu dan menyatakan bahawa kedai bebas cukai perayu boleh beroperasi dari jam 9 pagi hingga 9 malam. Jabatan Kastam juga menyatakan bahawa satu set syarat baru iaitu Perintah Tetap Kastam Bil 55 ('Lampiran D') akan diberikan. Antara lain, syarat-syarat tersebut menyatakan bahawa pemegang lesen hendaklah menyediakan rekod nama penuh; bilangan dokumen perjalanan; dan nombor kenderaan. Perayu

- A menyatakan bahawa mereka tidak mungkin menyatakan nama pelanggan dan nombor pasport dalam resit penjualan tunai. Jabatan Kastam mengeluarkan lesen yang diperbaharui yang berkuat kuasa dari 1 Jun 2016 hingga 31 Mei 2018 ('lesen 2016'). Dalam lesen 2016, Lampiran D tidak dilampirkan. Kemudian, Jabatan Kastam mengirim Lampiran D kepada perayu. Tidak ada alasan yang diberikan oleh Jabatan Kastam mengapa lampiran tersebut tidak diberikan bersama dengan lesen 2016. Jabatan Kastam, menulis atas nama responden pertama, mengeluarkan penemuannya dalam auditnya untuk tempoh antara Oktober 2013 dan November 2016 dan menyatakan bahawa perayu tidak menyimpan rekod pembeli menurut Lampiran D; dan perayu tidak menyatakan dokumen mengenai nama, perjalanan dan bilangan pelanggannya. Responden pertama terus membangkitkan bil tuntutan yang berkaitan dengan duti import, duti eksais, cukai jualan dan GST terhadap perayu. Rayuan ini berkaitan dengan bil tuntutan untuk bea masuk dan duti eksais.
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Diputuskan, membenarkan rayuan dengan kos RM10,000 dan mengetepikan keputusan Mahkamah Tinggi:

- E (1) Pertikaian untuk keseluruhan perkara bergantung pada perkataan 'nyatakan' dalam s 65D(2) Akta. Dengan membaca 'nyatakan dalam lesen' berdasarkan makna semula jadi, secara semula jadi bermaksud 'menyebut secara jelas, pasti dan yakin dalam lesen.' Dengan kata lain, tidak ada syarat yang dapat dikenakan setelah lesen dikeluarkan kerana ini bertentangan prinsip menyatakannya secara jelas, pasti dan yakin.
- F Berdasarkan pembacaan makna biasa daripada perkataan 'nyatakan' dan menerapkannya pada s 65D(3) Akta, jelas bahawa syarat-syarat mesti dinyatakan dengan jelas dan dikenal pasti dalam lesen kedai bebas cukai. Selanjutnya, s 65D(3) Akta hanya membenarkan responden menentukan syarat dalam lesen tersebut. Tidak ada peruntukan yang membolehkan responden meminda dan mengubah lesen atau menambahkan syarat lebih lanjut. Tindakan responden pertama yang menambahkan syarat baru selepas pengeluaran lesen kedai bebas cukai adalah ultra vires s 65D Akta dan syarat-syarat tersebut dibatalkan (lihat perenggan 26–27, 39–40 & 42).]
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Cases referred to

- Andrew Lee Siew Ling v United Overseas Bank (M) Bhd* [2013] 1 MLJ 449, FC (refd)
- BWE International Ltd v Jones* [2003] EWCA Civ 298, CA (refd)
- I *Boal Quay Wharfingers Ltd v King's Lynn Conservancy Board* [1971] 3 All ER 597, CA (refd)
- Brown and Secretary of Fisheries and Energy, Re* (1989) 18 ALD 543 (refd)
- Fairise Odyssey (M) Sdn Bhd v Tenaga Nasional Bhd* [2019] 6 MLJ 281; [2019] 1 LNS 865, FC (refd)

- Jardine v Attorney General for New Foundland* [1932] AC 275, PC (refd) **A**
Jawahar Lal Jaiswal v State of Uttar Pradesh And Ors AIR 1981 All 292, HC (refd)
Levi Strauss (Malaysia) Sdn Bhd v Ketua Pengarah Kastam [2011] MSTC 30-021, CA (refd)
National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue [1994] 1 MLJ 99; [1993] 4 CLJ 339, SC (refd) **B**
Nike Sales Malaysia Sdn Bhd v Jabatan Kastam Diraja Malaysia & Ors [2013] MSTC 30-060, FC (refd)
Tobacco Importers and Manufacturers Sdn Bhd v Ketua Pengarah Kastam Jabatan Kastam Diraja Malaysia [2017] MLJU 1716; [2017] 1 LNS 1738, HC (refd) **C**

Legislation referred to

- Banking and Financial Institutions Act 1989 (repealed by Financial Services Act 2013) ss 6(4), 9 **D**
 Commercial Vehicles Licensing Board Act 1987 s 19(2)
 Communications and Multimedia Act 1998 ss 30(2), 30(3), 30(4), 33
 Customs Act 1967 ss 35(a), 65D, 65D(2), (3), (4)
 Customs Duties (Exemption) Order 2013 **E**
 Docks and Harbours Act 1966 [UK] s 5(1)(a)
 Medical Device Act 2012 ss 18, 20
 Personal Data Protection Act 2010, s 45(2)(a)(iii)
 Sales Tax (Exemption) Order 2013 **F**

Appeal from: Judicial Review AA-25–23–11 of 2017 (High Court, Ipoh)

- Jason Tan (Chris Toh with him) (Lee Hishammuddin Allen & Gledhill) for the appellants.*
Shamsul Bolhassan (Krishna Priya a/p Veenagopal with him) (Attorney General's Chambers) for the respondent. **G**

Hanipah Farikullah JCA:

INTRODUCTION **H**

[1] This is an appeal by the appellant against the decision of the learned High Court judge dated 29 June 2018 dismissing the appellant's judicial review application for, among others, an order of certiorari to quash the bills of demand dated 14 November 2017 issued by the respondents. **I**

[2] The main issue which arises concerns the interpretation of a particular wording in the Customs Act 1967 ('the CA 1967').

A [3] Seruntun Maju Sdn Bhd is an applicant in the court below and the appellant in this court.

B [4] We heard the parties on 6 March 2019 and reserved our judgment in order to enable the parties to submit further submissions. We now give our decision in respect of the appeal. In short, we allowed the appeal.

THE FACTS

C [5] The issues that arise in this appeal require the facts to be set out with some particularity. The background which has given rise to the two bills of demand sought to be quashed can be described by reference to the description usefully contained in the plaintiff's written submission. The facts are as follows.

D [6] The appellant's principal activity is operating off a duty-free shop in the border town of Pengkalan Hulu, Perak. The said duty-free shop operated is situated between the Malaysian and Thai immigration checkpoints, which is also called as the 'buffer zone'.

E [7] Since the appellant commenced its business operation in the year 1991, the second respondent has consistently granted duty-free shop licences to the appellant pursuant to s 65D of the CA 1967.

F [8] On 10 September 2014, the appellant wrote to the Royal Malaysian Customs Department (Customs Department) and requested for the duty-free shop to be allowed to operate from 9am to 10pm. Prior to this request, the appellant had operated from 9am to 7pm.

G [9] The Customs Department on 5 November 2014, partially allowed the appellant's request and stated that the appellant's duty-free shop can operate from 9am to 9pm. The revised operation time was stated to come into effect on 5 November 2014. The Customs Department also stated in the said letter that a new set of conditions ie Appendix D of Perintah Tetap Kastam Bil 55 (Appendix D) will be given. Among others, the said conditions in para 19, states that the licensee shall prepare records of full names; the number of travel documents; and vehicle number.

I [10] On 16 December 2015, the appellant stated that they could not possibly state the name of customers and passport numbers in the cash sale receipts on the premise that:

- (a) the appellant's customers from Thailand are allowed to purchase goods at the appellant's duty-free shop. The said customers will not enter the Malaysian principal customs area;

(b) most of the appellant's customers that are present in the appellant's duty-free shop to purchase goods are of Thai nationality. The appellant's duty-free shop is located in a buffer zone which is between the Malaysian and Thai borders, where such customers do not enter into Malaysia; and **A**

(c) this procedure has been in place since the commencement of the appellant's business in the 90s. **B**

[11] The Customs Department issued a renewed licence dated 31 May 2016 which is effective from 1 June 2016 to 31 May 2018 (2016 licence). In this 2016 licence, Appendix D was not attached to the same. **C**

[12] By a letter dated 14 September 2016, the Customs Department sent Appendix D to the appellant. No reasons were provided by the Customs Department on why the said attachment was not provided together with the 2016 licence. **D**

[13] On 8 February 2017, the Customs Department, writing on behalf of the first respondent, issued its findings in its audit for the period between October 2013 and November 2016 and stated that: **E**

(a) the appellant did not keep the records of purchasers pursuant to para 19 of Appendix D; and

(b) the appellant did not state the documents on the names, journey and number of its customers. **F**

[14] On 17 February 2017, the appellant disagreed with the Customs Department and the first respondent's stance and stated that there is no basis for any duties to be imposed. **G**

[15] On 17 March 2017, the first respondent, repeated its earlier allegation that the appellant failed to comply with para 19 of Appendix D. The respondent further stated that consequent to the above, there is no proof of sales to qualified persons and there is a lack of information of the purchasers. It was also stated by the first respondent that on this premise, the appellant failed to comply with paras 7 and 8 of Appendix D, which is essentially the following: **H**

(a) para 7 of Appendix D: 'Sale is only permissible to persons arriving after spending more than 72 hours overseas based on the quantities allowed under the Customs Duties (Exemption) Order 2013 and Sales Tax (Exemption) Order 2013; and **I**

(b) para 8 of Appendix D: 'For those that are about to leave the country or foreigners that visited the duty-free shop for the purpose of purchasing duty-free goods, the allowed quantity is as follows:

- A** (i) beer: two crates;
 (ii) hard liquor: five liters; and
 (iii) cigarettes: three cartons.
- B** [16] On 14 November 2017, the first respondent proceeded to raise bills of demand relating to import duties, excise duties, sales tax and GST against the appellant. The present appeal relates to the bills of demand for import duties and excise duties.
- C** THE ISSUES
- [17] The issues for determination by this court are as follows:
- D** (a) whether the conditions must be set out together with the licence;
 (b) whether the respondents can impose the additional conditions after the issuance of the license;
 (c) whether the conditions are unreasonable and irrational; and
- E** (d) whether there is a legal basis for the respondents to raise the two bills of demand.
- [18] We will begin by considering the first issue. If the answer is in the negative, it is not necessary to consider the other issues.
- F** THE JUDGMENT OF THE HIGH COURT
- [19] Having set out the general background to the case, the arguments of the parties, and having referred to certain relevant statutory provisions, the learned High Court judge refused the appellant's application based on the following grounds:
- G** (a) the first respondent is empowered to give conditions for a duty-free shop license and such conditions can be given at any time, even after the issuance of the license;
- H** (b) the appellant did not challenge the conditions issued by the first respondent;
- I** (c) The appellant's shop is located within the Malaysian principle customs area and therefore, goods arriving at the shop cannot be deemed to be exported under s 35(a) of the CA 1967;
- (d) the conditions given by the first respondent cannot be said to violate the Personal Data Protection Act 2010 because s 45(2)(a)(iii) of the same

exempts the operation of personal data laws on issues relating to taxation; and

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- (e) s 65D of the CA 1967 allows the first respondent to issue any conditions as it sees fit.

THE APPEAL

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[20] Learned counsel for the appellant contended strongly that it cannot be correct that the first respondent after issuance of the license can impose additional conditions in the future.

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[21] In response to that submission, it was argued for the respondents as follows:

- (a) in this case, the Appendix D conditions were issued on 5 November 2014 which was after the issuance of the 2014 licence and the same Appendix D conditions was issued again on 14 September 2016 which was after the issuance of the 2016 licence;
- (b) since the Appendix D conditions were already issued to the appellant on 5 November 2014 and signed by the appellant on 14 November 2014 for the 2014 licence, the Appendix D conditions is still applicable for the 2016 licence; and
- (c) the appellant was fully aware that the Appendix D conditions are the conditions imposed on the 2014 licence and the 2016 licence.

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[22] With respect, we do not accept the respondent's argument in the form that it was advanced. Our reasons are as follow.

[23] The provision which confers powers to the respondents to issue a license to operate a duty free shop is s 65D of the CA 1967. It provides as follows:

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(1) The Director General may at his absolute discretion on payment of such fee as may be prescribed, grant a license to operate a duty free shop to any person, hereinafter in this section referred to as 'the licensee', and when granted, may suspend or withdraw such license.

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(2) *Any such license shall be for such period and subject to such conditions as the Director General in each case may specify in the license.*

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Director General.

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(4) If it appears at any time that any goods have been sold or removed from such duty free shop otherwise than in accordance with all the conditions of a license granted under this section, the licensee of such duty free shop shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall,

- A without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods sold or removed. (Emphasis added.)
- B [24] It is clear that the respondents have the power to grant a duty free shop license to a licensee such as the appellant. Further, s 65D(2) of the CA 1967 clearly prescribes that the licence shall be subject to the conditions specified by the respondents in the licence.
- C [25] By virtue of s 65D(4) of the CA 1967, licensees of a duty free shop shall be presumed to have illegally removed such goods and be liable to pay the customs duty leviable on the goods sold if:
- D (a) the goods were sold or removed from the duty-free shop contrary to the conditions of a license granted by the respondents to the appellant; and
- (b) there is no proof to the contrary that the goods were not illegally removed.
- E [26] In our opinion, the disputes to the whole matter depend on the word 'specify' in s 65D(2) of the CA 1967. When there is no definition of the word 'specify' in the Act, the court must look to the ordinary meaning of the words 'to specify'. In interpreting the provision of the statute it is fundamental that the words in a statute be given their plain, ordinary and natural meaning (see *Fairise Odyssey (M) Sdn Bhd v Tenaga Nasional Bhd* [2019] 6 MLJ 281; [2019] 1 LNS 865 (FC) and *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd* [2013] 1 MLJ 449 (FC))
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- G [27] By reading 'specify in the licence' based on its natural meaning, it would naturally mean: 'to mention explicitly, definitely and certainly in the licence'. In other words, no conditions can be imposed after the licence had been issued as this goes against the principle of stating it explicitly, definitely and certainly.
- H [28] Does this word mean that the conditions must be exactly mentioned or specifically set out or particularised in the licence itself when it was granted or issued by the first respondent.
- I [29] In considering this issue, we have also looked at several English, Australian and Indian authorities.
- [30] The English Court of Appeal in *BWE International Ltd v Jones* [2003] EWCA Civ 298 had the occasion to look into the plain meaning of 'specify' as follows:
- I take the meaning 'specify' from the *Shorter Oxford English Dictionary* 2002, which

- defines the word ‘*specify*’ (used as a transitive verb) ‘to *mention or name a thing explicitly*, to state categorically ...’ A
- [31] Authorities in other jurisdictions which dealt with similar provisions such as that in s 65D(2) of the CA 1967, similarly held that the conditions must be set out and identified in the licence. In the case of *Re Brown and Secretary of Fisheries and Energy* (1989) 18 ALD 543 (Australia Administrative Appeals Tribunals), it was held as follows: B
- Section 9(5)(a)(i): a licence granted under this section is subject to such conditions specified in the licence. Section 9(5)(b): The minister or the Secretary may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or specify further conditions to which the licence is to be subject. C
- Section 9(5)(a)(i) authorises conditions to be imposed when a licence is granted; *it does not authorize their imposition after that*. Section 9(5 b) empowers the respondent to ‘specify further conditions to which the licence is to be subject. (Emphasis added.)’ D
- [32] In *Jardine v Attorney General for New Foundland* [1932] AC 275 (the Privy Council) held that: E
- There is a complete answer to any claim to forfeit the license upon the footing of a breach of this second condition in the fact that this condition is not set out in the license, but applies only by reason of the statute, and therefore does not form one of ‘any of the conditions herein contained.’
- [33] In *Boal Quay Wharfingers Ltd v King’s Lynn Conservancy Board* [1971] 3 All ER 597, the English Court of Appeal examined s 5(1)(a) (now repealed) of the Docks and Harbours Act 1966, where it is stated that: F
- (1) Without prejudice to subsection (4) of this section, but subject to section 10(2) of this Act, a licence for any port may be granted subject to conditions — (a) specifying the number of dock workers (other than supplementary workers) who are to be employed by the applicant as permanent workers in that port on the relevant date ... G
- [34] It was further held in *Boal Quay Wharfingers* that: H
- Under the 1966 Act there was a licensing authority for each port. (For King’s Lynn the licensing authority was the King’s Lynn Conservancy Board.) Every employer of labour who wished to use the port had to be licensed by the licensing authority. *The licensing authority, on issuing the licence, could specify in it the number of dock workers whom the employer was to employ.* I
- [35] In *Jawahar Lal Jaiswal v State of Uttar Pradesh And Ors* AIR 1981 All 292, a case concerning licence for excise shops, the Indian Allahabad High Court held as follows:

- A The Benck held that the power to place restrictions and conditions subject to which license may be granted fell within the purview of Section 41(c)(v) of the UP Excise Act (No IV of 1910). Such restrictions and conditions could only be placed on licenses which may be granted thereafter. They will not be applicable to licenses already issued. Hence, the amending notification reducing the business hours of
- B excise shops by two hours, was not applicable to existing licenses. The writ petitions were accordingly allowed and the authorities were directed not to enforce the notification dated September 18, 1977 on the existing licensees.
- C [36] The principles cited in the above authorities showed that when a provision expressly provides that conditions shall be specified in the licence, it means that the conditions must be granted when the licence was issued. No conditions can be granted after that.
- D [37] It was held by our Supreme Court in *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99; [1993] 4 CLJ 339, that Malaysia Courts have consistently adopted the following approach in interpreting taxing statutes:
- E ... In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at language used ...
- F [38] The above principle was applied in the Customs cases of *Nike Sales Malaysia Sdn Bhd v Jabatan Kastam Diraja Malaysia & Ors* [2013] MSTC 30-060 by our Federal Court, and this courts decisions in *Levi Strauss (Malaysia) Sdn Bhd v Ketua Pengarah Kastam* [2011] MSTC 30-021; and *Tobacco Importers and Manufacturers Sdn Bhd v Ketua Pengarah Kastam Jabatan Kastam Diraja Malaysia* [2017] MLJU 1716; [2017] 1 LNS 1738.
- G [39] Therefore, based on a reading of the plain meaning of the word ‘specify’ and applying it to s 65D(3) of the CA 1967, it is clear that the conditions must be unambiguously particularised and identified in the duty-free shop licence.
- H [40] Further, it is also noted that s 65D(3) of the CA 1967 only allows the respondents to specify the conditions in the licence. There are no provisions that allow the respondents to modify and vary the licence or add further conditions. This can be contrasted with other Malaysian legislation, where
- I such provisions exist as follows:
- (a) Commercial Vehicles Licensing Board Act 1987
Section 19(1): Subject to this Act, the Board may attach to any licence granted under this Act such conditions as it may think fit.
Section 19(2): The Board may, at any time and from time to time in its

- discretion, add, cancel or vary any of the conditions attached to a licence under this section; A
- (b) Banking and Financial Institutions Act 1989 (repealed)
Section 6(4): Upon receiving an application and the recommendation of the Bank under this section, the Minister may grant the licence, with or without conditions, or refuse the licence. B
Section 9: The Minister may, at any time, on the recommendation of the Bank, impose new conditions on a licence granted under section 6(4), or vary or revoke any condition imposed on such licence under section 6(4) or under this section, or already varied under this section; C
- (c) Communications and Multimedia Act 1998
Section 30(2): The Minister may ... grant an individual licence.
Section 30(3): If the Minister grants an individual licence, the Commission shall inform the applicant by written notice (b) of any special or additional conditions. D
Section 30(4): Notwithstanding subsection (2), all individual licences shall be deemed to include the relevant standard licence conditions specified in the Schedule. E
Section 33: The Minister may, at any time, (a) modify or vary the special or additional conditions of an existing individual licence; (c) impose further additional conditions to an existing individual licence;
- (d) Medical Device Act 2012 F
Section 18: (1) The Authority may ... grant the establishment licence for a prescribed period or refuse to grant the establishment licence for a prescribed period or refuse to grant the establishment licence. (2) An establishment licence granted under subsection (1) shall be subject to ... such conditions as the Authority thinks fit to impose. G
Section 20: The Authority may, at any time (a) impose any additional conditions ... (b) vary or revoke any of the conditions imposed.
- [41] Contrasting the above legislations to s 65D of the Customs Act, it is clear that the latter does not allow the second respondent to add new conditions after the issuance of the licence. This is for the simple fact that there are no express provisions that allow them to do so. H
- [42] Based on the above reasons, we agreed with the plaintiff that the first respondent's act of adding new conditions subsequent to the issuance of duty-free shop licenses is ultra vires of s 65D of the CA 1967 and those conditions stand to be quashed. I

- A [43] Upon the view we have taken, it is unnecessary for us to consider other grounds of appeal.

CONCLUSION

- B [44] In conclusion, we are of the view that the conditions specified in Lampiran D of the licensee are ultra vires s 65D of the CA 1967. We would therefore, allow the appeal with cost of RM10,000 for here and below subject to allocator fee. The decision of the High Court is set aside.

- C *Appeal allowed with costs of RM10,000 and decision of High Court set aside.*

Reported by Nabilah Syahida Abdullah Salleh

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